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Ann Arbor, MI 48105

In re Application of	:	
Barth et al	:	DECISION ON
Application No.: 09/869,871	:	
PCT No.: PCT/EP00/00340	:	REQUEST FOR
Int. Filing Date: 18 January 2000	:	
Priority Date: 09 February 1999	:	WITHDRAWAL OF
Attorney's Docket No.: 6381-08-IM	:	
For: METHOD FOR PRODUCING	:	ABANDONMENT UNDER
SYMMETRICAL AND ASYMMETRICAL	:	
CARBONATES	:	37 CFR 1.181

This Decision is in response to applicants "Petition Under 37 CFR 1.181 To Withdraw Holding of Abandonment" filed on 22 July 2002, which argues that the above-identified application was improperly held abandoned.

### **BACKGROUND**

On 06 July 2001, applicant filed a Transmittal letter (Form PTO-1390) for entry into the national stage in the United States, which was accompanied by, a copy of the international application and an executed declaration. No translation of International Application into English was provided on such time.

On 22 August 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a translation of the application into English must be furnished within the time period set forth. The notification set two months time limit or 32 months from the priority date for the application, whichever is later to respond.

On 03 June 2002, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that applicant had failed to respond to the "NOTIFICATION OF MISSING REQUIREMENTS (PCT/DO/EO/905), mailed 08/22/2001 within the time period set therein; accordingly, the application was abandoned.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 03 June 2002, petitioner has submitted the instant petition requesting withdrawal of the Notice of Abandonment. In support of the request, petitioner has provided a copy of the returned/stamped receipt card acknowledging a receipt date of 19 February 2002 and a "Response To Notice The Missing Parts Of Application Filing Date Granted (PTO-1533)" indicating a certificate of mailing on 23 October 2001.

### DISCUSSION

The present petition was accompanied by a copy of the original postcard which was sent to the United States Designated/Elected Office (DO/EO/US). The postcard indicates an item received on 19 February 2002 was, *inter alia*, "A RESPONSE TO THE NOTICE OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371, but there is no indication in the postcard that "a translation of the application into English" accompanied that submission. Applicant's representative states that the papers accompanying the present petition are copies of the papers that were sent to the Patent Office on 23 October 2001.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard receipt serves as *prima facie* evidence of receipt of the listed item on 19 February 2002 by the USPTO.

Since the postcard is not itemized and does not list that the "translation of the application into English" in its contents of items sent on 23 October 2001, the "translation of the application into English" can not be considered as being simultaneously filed with the "RESPONSE TO THE NOTICE OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371." Accordingly, the certificate of mailing under 37 CFR 1.8 is invalid for the "translation of the application into English," and can not be used as a basis for a timely filing date of 23 October 2001 for it.

Consequently, since the response for the Notice of Missing Parts, "translation of the application into English," was received on of 22 July 2002, as stamped by the USPTO; this is date of receipt at the USPTO. The response was untimely since it was received three months after the period stipulated with extensions of time, which expired on 04 April 2002.

In view of the above, the applicant's representative response- the translation received on 22 July 2002- is considered untimely. Consequently, the aforementioned application was properly abandoned.

Applicant may wish to consider filing a petition to revive the application under 37 CFR 1.137(b).

**CONCLUSION**

For reasons above, the petition under 37 CFR 1.181 is **DISMISSED**, without prejudice.

The application remains **ABANDONED**.

If reconsideration of the merits of the petition under 37 CFR 1.181 is desired or if applicant decides to file a petition to revive under 37 CFR 1.137(b), applicant must file such within **Two (2) MONTHS** from the mail date of this Decision.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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